

REMARKS***Drawing Corrections***

A replacement Figure 1 marked "Prior Art" accompanies this communication, as requested.

Specification Corrections

Replacement paragraphs [0019] and [0025] with filled-in serial numbers accompanies this communication, as requested.

Claim Rejections –35 USC §112, second paragraph

Claims 3, 4, and 6 are rejected under 35 USC 112 as being indefinite for failing to particularly point out or distinctly claim the subject matter which applicants regard as their invention. Claims 2, 3 and 4 have been amended to make it clear that the present invention equips a clinical analyzer with assay-related resources to achieve an initial assay throughput in terms of the rate at which assays are completed, wherein one of the resources is being used at its maximum capacity while another of the resources is not being used at its maximum capacity. In particular, the analyzer is initially configured so that the full number of available cuvette ports is underutilized while the full capacity of the reagent server is being utilized. See paragraph [0030] at the bottom of page 11. Claim 6 has been amended to provide antecedent for operating resources which are not throughput limiting.

Concerning the Examiner's comments regarding this rejection, the assay throughput of the analyzer is proportional to the rate at which reagents may be delivered to a reaction cuvette and is inversely proportional to the number of reagent additions required to perform an assay. See paragraph [0027] at the middle of page 9. Table 1 is an example illustrating how throughput decreases as the number of assay-required reagent additions increases from 1 to 3. Tables 2 and 3 illustrate how throughput increases as the number of reagent servers increase from one server (server 26 in Table 1) to two servers (add server 27 in Table 2) to three servers (add server 28 in Table 3). It is important to

note that the specific array of assays the analyzer is capable of performing (called "assay menu") is unchanged; it is the assay throughput that is increased as additional reagent servers are added. It is also important to note, in distinction from the Examiner's basis for examination that new "dispensers" are not being added as the sample proceeds through the device. Paragraph [0020] explains how, Reaction carousel 12 is rotatable using stepwise movements separated by a constant dwell time during which carousel 12 is maintained stationary and reagent add stations operate as needed on an assay mixture. In operation, assays are conducted in cuvette 24 as it is rotated into a reagent dispensing position and reagent dispensed therein by probes 60P1 and 60P2 from the single server 26. In summary, to properly examine the present invention, important features are:

- 1) The menu of assays is not changing as servers are added;
- 2) The throughput of assays is increasing as servers are added; and,
- 3) Servers are not being added for each reagent required as a sample proceeds through the analyzer.

In response to this rejection, claims 1, 2 and 3 have been amended to make it clear that the initial assay throughput is increased by incrementally adding a resource that is throughput limited. The assay menu is not changed in this process.

Claim Rejections –35 USC §102(b)

Claims 1-6 are rejected under 35 USC 102(b) as being anticipated by Jones (US 3,615,239). The Examiner cites Jones for teaching that the number of diagnostic tests to be performed by the analyzer may be increased by adding a further module. In the instance of Jones, however, the additional modules are added in order to add a new single test or operation to the analyzer's menu. Col. 2, lines 8-65 disclose that the programming modules are rotatable disks with extending fingers that cause electrical contact to a device so that fluid is delivered or removed from a tube. Each disk programs a single separate test or operation. Lines 63-65 make this evident since, "the programmer includes a plurality of modules, each being representative of the treatment required for a different diagnostic test." Thus the addition of Jones' modular programming disk has the effect of adding another assay to the analyzer's menu and does not affect throughput of the analyzer as does Applicant's claimed invention.

Consequently, Jones cannot be said to anticipate the present invention and Applicants respectfully request that the rejection over Jones be withdrawn.

Claim Rejections –35 USC §102(b), second paragraph

Claims 1-6 are rejected under 35 USC 103(a) as unpatentable over Berglund (US 4,459,265) or Minekane (US 4,906,433) in view of Jones (US 3,615,239). Berglund discloses an analyzer wherein the number of reagent-supply stations and their location may be varied to suit different purposes. The Examiner recognizes that, "Berglund does not teach modular configuration for the additional reagent-supply stations." As discussed above, Jones does not disclose modular additions capable of increasing an analyzer's throughput. Thus the combination of Berglund and Jones fails to make Applicant's invention unpatentable because no modification of the references makes Applicant's method for increasing throughput obvious. Minekane's teachings are similar to Berglund's, in that Col. 7 lines 35-45 disclose reagent containers that may be positioned on different arcs, however, as the Examiner noted, "Minekane does not teach a modular configuration for the additional reagent storage locations." Thus the combination of Minekane and Jones fails to make Applicant's invention unpatentable because no modification of the references makes Applicant's method for increasing throughput obvious.

Applicant believes that this application contains patentable subject matter and that the foregoing amendments provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,


Leland K. Jordan
Registration No. 36,560
Agent for Applicant

Dade Behring Inc.
1717 Deerfield Road
P. O. Box 778
Deerfield, IL 60015-778
(847) 267-5365